

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF RIO ARriba

ROBERTA MARTINEZ,

Plaintiff,

vs.

No. D-117-CV-2013-00050

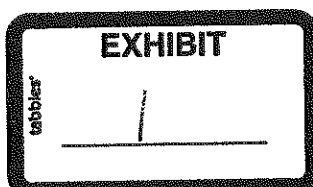
BOARD OF COUNTY COMMISSIONERS
FOR RIO ARriba COUNTY,

Defendant.

**ORDER GRANTING PARTIAL SUMMARY JUDGMENT
TO DEFENDANT RIO ARriba COUNTY BOARD OF COUNTY
COMMISSIONERS ON COUNTS III, IV AND V OF PLAINTIFF'S
COMPLAINT, ALLEGING VIOLATION OF THE NEW MEXICO
HUMAN RIGHTS ACT, DISCRIMINATION AND
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

THIS MATTER came before the Court on Defendant Rio Arriba County Board of County Commissioners' Motion for Partial Summary Judgment on Counts III, IV and V of Plaintiff's Complaint, alleging violation of the New Mexico Human Rights Act, discrimination and intentional infliction of emotional distress. The Court has read and considered the papers submitted and has heard the arguments of counsel on the return date of the Motion. The Court finds that there is no disputed issue of material fact, that Defendant Rio Arriba County Board of County Commissioners' motion is well taken and shall be granted.

In order to pursue a claim of violation of the New Mexico Human Rights Act or a claim of discrimination, a plaintiff must file a complaint with the New Mexico Human Rights Division within 300 days of the alleged discriminatory act. NMSA 1978, § 28-1-10. The act of discrimination alleged by Plaintiff Roberta Martinez occurred on February 5, 2011. Plaintiff did

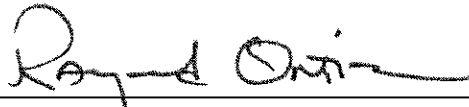


not file an administrative complaint with the New Mexico Human Rights Division until May 25, 2012, some 475 days from the alleged act of discrimination. The administrative complaint is thus untimely.

The Court therefore finds that Plaintiff Roberta Martinez did not timely exhaust her administrative remedies with respect to her claims of violations of the New Mexico Human Rights Act and her claims of discrimination. Consequently, this Court lacks subject matter jurisdiction to hear those claims. The Court therefore grants partial summary judgment to Defendant Rio Arriba County Board of County Commissioners on Counts III and IV of the Complaint. Those counts are hereby dismissed with prejudice.

As to Count V of Plaintiff Roberta Martinez's Complaint alleging intentional infliction of emotional distress, the Court finds that there is no waiver of sovereign immunity for such tort under the New Mexico Tort Claims Act, NMSA 1978, § 41-4 1 et seq. While Plaintiff argues that she is pursuing such a claim for conduct alleged against Rio Arriba County employee Maria Montoya that was outside the scope of Ms. Montoya's lawful duties, Ms. Montoya is not named as a party defendant. The only defendant named is the Rio Arriba Board of County Commissioners. There not being a waiver of sovereign immunity in order to pursue such a claim against Defendant Rio Arriba County Board of County Commissioners, the Court therefore grants summary judgment to Defendant Rio Arriba County Board of County Commissioners on Count V of the Complaint. That count is also dismissed with prejudice.

IT IS SO ORDERED.



THE HONORABLE RAYMOND Z. ORTIZ
District Court Judge

Submitted by:
YENSON, ALLEN & WOSICK, P.C.

/s/ Robert W. Becker

Robert W. Becker

Attorney for Defendant Rio Arriba

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Approved as to form:

/s/ Antonio J. Salazar, electronically approved 6/18/14

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